

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE GARRISON,
Plaintiff,
v.
ROBIN; MARIN COUNTY JAIL,
Defendant.

No. C 14-0249 JSW (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

INTRODUCTION

Plaintiff, a California prisoner at Salinas Valley State Prison, filed this pro se civil rights complaint under 42 U.S.C. § 1983. His application to proceed *in forma pauperis* is granted in a separate order. The complaint is dismissed with leave to amend.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement

1 of the claim showing that the pleader is entitled to relief." "Specific facts are not
 2 necessary; the statement need only "give the defendant fair notice of what the claim
 3 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
 4 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
 5 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
 6 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
 7 recitation of the elements of a cause of action will not do. . . . Factual allegations must
 8 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
 9 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
 10 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
 11 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
 12 699 (9th Cir. 1990).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
 14 (1) that a right secured by the Constitution or laws of the United States was violated, and
 15 (2) that the alleged violation was committed by a person acting under the color of state
 16 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 LEGAL CLAIMS

18 He claims that the jail and a jail official named "Robin" denied him access to the
 19 courts. Plaintiff alleges that on December 8, 2013, he requested stamped envelopes from
 20 unnamed jail officials to allow him to correspond with the courts about a pending case.
 21 Those requests were ignored until the end of the month, when he began receiving the
 22 envelopes he requested. He complains that on three occasions he traded his lunch for
 23 envelopes before jail officials started providing them.

24 Plaintiff does not state a cognizable claim for the violation of his right to access
 25 the courts because he has not alleged an "actual injury." Prisoners have a constitutional
 26 right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 350 (1996). To establish a
 27 claim for any violation of the right of access to the courts, the prisoner must prove that
 28 there was an inadequacy in the prison's legal access program that caused him an actual

1 injury. *Id.* at 350-55. To prove an actual injury, the prisoner must show that the
2 inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim
3 concerning his conviction or conditions of confinement. *Id.* at 354-55. To state a claim
4 that the denial of materials, such as postage or envelopes, violated a prisoner's right to
5 access the courts, there must be a showing that the denial of the materials denied the
6 prisoner the ability to perfect and pursue legal action, i.e. actual injury to court access.
7 *See Gluth v. Kangas*, 951 F.2d 1504, 1509 n.2 (9th Cir. 1991); *King v. Atiyeh*, 814 F.2d
8 565, 565 (9th Cir. 1987) (no established minimum postage that state must meet; focus of
9 court is whether plaintiff has been denied meaningful access).

10 Plaintiff has not alleged actual injury because he has not alleged that Defendants'
11 actions prevented him from pursuing or perfecting a case in the courts. Plaintiff's
12 allegation that he missed three lunches is not the type of injury that constitutes the denial
13 of access to courts, even if he lost the lunches in order to gain the materials he needed.
14 *Cf. Gluth*, 951 F.2d at 1509 n.2 (a prison's indigence policy which forces prisoners to
15 choose between purchasing hygienic supplies and essential legal supplies does not show
16 actual injury). Plaintiff will be given leave to file an amended complaint in which to
17 allege, if he can do so in good faith, "actual injury" within the meaning of *Lewis*, i.e. that
18 the denial of stamped envelopes in December 2013 prevented him from pursuing or
19 perfecting his court case. The amended complaint must also include the last name of the
20 defendant "Robin" and any other individual defendants in order to allow for service of
21 process.

22 CONCLUSION

23 This case is DISMISSED WITH LEAVE TO AMEND.

24 Plaintiff shall file an amended complaint within **twenty eight (28) days from the**
25 **date this order is filed** in which he cures the deficiencies described above. Plaintiff is
26 advised to use the Court's complaint form. The amended complaint **must** include the
27 caption and civil case number used in this order (No. C 13-4162 JSW (PR)) and the
28 words "COURT-ORDERED FIRST AMENDED COMPLAINT" on the first page.

1 Because an amended complaint completely replaces the original complaint, *see Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate material
3 from the original by reference. Failure to amend within the designated time and in
4 accordance with this order will result in the dismissal of this action.

5 IT IS SO ORDERED.

6 DATED: 2/6/14

7 
8 JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY T. GARRISON,
Plaintiff,

Case Number: CV14-00249 JSW
CERTIFICATE OF SERVICE

v.

ROBIN PRISONER SERVICES WORKER et
al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 6, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony Tyrone Garrison J-27921
CSP-Solano II
California State Prison-Solano
P.O. Box 4000
Vacaville, CA 95696

Dated: February 6, 2014

Richard W. Wieking, Clerk
By: Lisa R Clark, Deputy Clerk